

## Best Available Copy

### REMARKS

Reconsideration is requested.

A supplemental information disclosure statement is filed herewith, listing a further prior art document that was recently found by the applicants in connection with litigation against James Chuhran. This refers to the use of a rodenticide comprising "celliose (sic) and ground up plants". No details of the source of the plant material are given and, in particular, there is no indication that the material is obtainable from the white core material of corn cobs.

Prior claims have been suitably amended and new claims 35-43 have been presented for the Examiner's consideration. Support for these claims is found throughout the applicant's disclosure. See, for example, page 2, lines 9-28 and the Efficacy Study at page 5, particularly lines 25-34.

Of the new claims, claims 38-44 represent modified versions of claims 2, 5, 7, 8, 10 and 11 of the Chuhran patent U.S. 6,136,340 (the '340 patent). Claims 38-44 differ in non-substantial ways from the patent claims and are presented for interference with the Chuhran patent. It is believed that applicant's claim 38 could serve as the count of the requested interference. All of the Chuhran claims and applicant's method claims 38-44 should be designated as corresponding to the count.

*They want an interference.*

As background to, and in support of, this request for interference, the applicant attaches hereto a copy of Plaintiff's Motion for Preliminary Injunction with attachments, which has been filed by applicant's assignee Delmar Products, Ltd. against Chuhran in Case No. 01-CV-70294-DT in the United States District Court for the Eastern District of Michigan, Southern District. The Motion for Preliminary

Injunction is part of an action brought by applicant's assignee against Chuhran which includes, *inter alia*, charges that the applicant made the invention claimed in the '340 patent. The attached Motion with Exhibits provides evidence which fully supports applicant's position and clearly warrants declaration of the requested interference. Accordingly, prompt declaration of the interference is urged.

Referring now to the Examiner's action, attached hereto in response to the Examiner's comments in ¶ 1, page 2 of the action, is a certified copy of the applicant's priority document (UK 9606483.7). The present application is, in essence, a national phase filing of the applicant's PCT/GB97/00800. However, as the record will show, a national phase application was not timely filed. Accordingly, the applicant petitioned for revival of the PCT application designating the U.S. under the provisions of 37 CFR 1.137(b). The present application is, therefore, formally identified as a continuation of PCT/GB97/00800 designating the U.S. This designation is thought to be appropriate in the circumstances.

The applicant is entitled to priority benefit based on his initial U.K. filing, certified copy of which is submitted herewith. It is believed that a copy of the PCT filing should be available within the USPTO, PCT Branch as it is standard practice for the originating PCT Receiving Office via the International Bureau to forward the application to the Patent Office of countries designated for national filing. Hence the applicant's PCT filing should be available to the Examiner in the USPTO or from the International Bureau.

Reconsideration of the Section 112, 2<sup>nd</sup> ¶ rejection of claims 14-34 is requested. Claims 14 and 26 have been amended to deal with certain aspects of the Examiner's rejection. In particular, claim 14 has been amended to delete reference

to "body fat or adipose tissue". While body fat is not considered to be the same as adipose tissue, the language is unnecessary for proper definition of the invention. Basis for the amendment to claim 14 is found in, for example, the study results given in Table II, page 6 of the applicant's specification.

The amendments to claim 26 are thought to clarify the language of this claim without departing from the meaning or intended scope of the claim.

The Examiner is requested to reconsider the objection to the term "cellulosic material". The source of this material is described in claim 14 and the material further defined in claim 14 as one "which is non-toxic to humans but which causes rodents to lose weight and die". It is believed that this claim language is clear and fully warranted by the applicant's disclosure. Accordingly, withdrawal of the objection to "cellulosic material" is requested.

The applicant also requests reconsideration of the objection to the references to DK 446, 401, 442, 512, etc. These hybrid corn types are the trade names of hybrids produced commercially by Dekalb Plant Genetics of DeKalb, Illinois and in this connection, there is attached a copy of a printout from trade literature obtained from Dekalb on March 25, 1996, i.e. before the filing date of the present application.

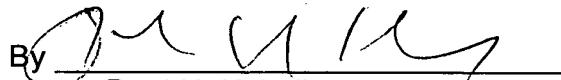
Additionally, the Examiner is requested to reconsider the objection to the term "white hard core material" (claim 31) as indefinite. This material is obtained in the manner described at page 2, lines 14-22 of the applicant's specification, i.e. it is the hard white core which remains after removing the outer layer from a hybrid corn cob. It is submitted that those in the art would have no difficulty in understanding the claim language. In any case, the reference to "hard" core material has been replaced in claim 31 by language which should be acceptable as clear and definite.

The Examiner is also requested to reconsider the Section 103(a) rejection of claims 14-34 as unpatentable over the Chuhran patent, in view the present request for interference with the patent. The Chuhran patent should not be citable-as-prior-art against the applicant as it represents the applicant's own work. This is believed to be evident from the attached Motion for Preliminary Injunction and accompanying exhibits. Also attached for the Examiner's information is a copy of the complaint filed by applicant's assignee against Chuhran. If the Examiner wishes copies of any other papers from this ongoing litigation, including perhaps a list of docket entries, it is requested that the undersigned be advised.

Favorable action, including prompt declaration of the interference, is requested.

Respectfully submitted,

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APPENDIX

Version with Markings to Show Changes Made

IN THE CLAIMS

14. (Amended) A rodenticide comprising cellulosic white core material obtainable from corn cobs which material is non-toxic to humans but which causes rodents to [at least excrete material selected from the group consisting of body fat and Adipose tissue] lose weight and die.

15. (Amended) [A] The rodenticide of claim 14 comprising cellulosic white core rodenticidal material obtained from a cob core of [maize] corn hybrid [DK 446].

17. (Amended) [A] The rodenticide of claim 16 wherein said hybrid is selected from the group consisting of DK 446, DK 401, DK 442, DK 512, DK 560, DK 588, DK 591, DK 604, DK 628, DK 634 or DK 512wx.

26. (Amended) A rodenticide comprising material which is an agonist in rodents of cellulosic white core material obtained from corn hybrid DK 446 which is rodenticidal when orally administered in a manner enabling free access [by] to rodents.

30. (Amended) A method of alleviating rodent infestation, the method comprising depositing in a region of infestation a rodenticide comprising cellulosic white core material [obtainable] obtained from [the group consisting of DK 446, DK

401, DK 442, DK 512, DK 560, DK 588, DK 591, DK 604, DK 628, DK 634, and DK 512wx] corn cobs.

31. (Amended) **[A]** The method according to claim 30 wherein said white core cellulosic material is [white hard core cellulosic material] an agonist in rodents of the cellulosic white core material obtained from the DK 446 corn hybrid.

33. (Amended) A method of making a rodenticide comprising bringing into association (a) a bait attractant and (b) white core cellulosic material, [said cellulosic material being obtainable from a cob of a maize hybrid selected from the group consisting of DK 446, DK 401, DK 442, DK 512, DK 560, DK 588, DK 591, DK 604, DK 628, DK 634, DK 512wx, and maize hybrids characterised by normally growing to a height of 2.7 to 3.3 metres (9 to 11 feet) and by normally having a single giant ear of corn] obtained from the corn cobs.

34. (Amended) **[A]** The method as claimed in claim 33 wherein said white core cellulosic material is [white hard core material] obtained from the cob of a corn hybrid characterized by normally growing to a height of 2.7 to 3.3 metres (9 to 11 feet) and by normally having a single giant ear of corn.

Claims 35-43 have been added.